

STATE OF MAINE
SUPREME JUDICIAL COURT
PROPOSED AMENDMENTS TO
MAINE RULES OF UNIFIED CRIMINAL PROCEDURE

2015 Me. Rules ____

Effective: _____, 2015

All of the Justices concurring therein, the following amendment to the Maine Rules of Unified Criminal procedure is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 43A of the Maine Rules of Unified Criminal Procedure is enacted to read as follows:

RULE 43A. RESTRAINT OF JUVENILES

(a) Physical restraints prohibited absent court order. No transporting agency, judicial marshal, or other designated court security officer shall bring a juvenile into the courtroom wearing any physical restraints or place a juvenile in physical restraints during a juvenile proceeding, except when ordered by the court during or prior to the juvenile's court appearance in accordance with this rule.

(b) Determination by the court. Ordinarily, physical restraints will not be used on juveniles in Maine's courtrooms. If the State, the transporting agency, the judicial marshal, other designated court security officer, or the juvenile's attorney requests that physical restraints be used on the juvenile in the courtroom, the court, the juvenile, juvenile's attorney, and the State's representative shall be notified by the requesting party, agency, or officer. If the juvenile or attorney for the juvenile objects, the court shall, based on an individualized assessment of the particular juvenile and the available security resources, determine whether one or more of the grounds for use of physical restraints listed in section (c) exists. During a proceeding, the court may also, on its own motion, with similar notice to the parties present, and based on an individualized assessment of the particular juvenile and the available security resources, determine whether one or more of the grounds for use of physical restraints listed in subsection (c) exists.

(c) Grounds for use of restraints. When ruling on the necessity of restraints, the judge shall consider the following:

(1) Whether the present behavior of the juvenile creates a current threat to that juvenile's safety or the safety of others in the courtroom;

(2) Whether the present behavior of the juvenile creates a substantial risk of flight from the courtroom;

(3) Whether the juvenile's recent disruptive courtroom behavior threatens that juvenile's safety or the safety of others in the courtroom;

(4) Whether the juvenile's past behavior creates a substantial risk that the juvenile will threaten that juvenile's safety or the safety of others in the courtroom; and

(5) Whether there are less restrictive alternatives available to maintain order and safety in the courtroom.

(d) Findings. Whenever practical, the court shall provide the juvenile or the juvenile's attorney an opportunity to state the basis of the objection before the court renders a decision on the use of restraints. If restraints are ordered over the objection of the juvenile, the court shall make findings of fact on the record regarding the probable cause in support of the order.

Advisory Note – August 2015

Rule 43A is enacted to clarify the procedures and standards applicable when a request has been made to physically restrain a juvenile appearing before the court in a proceeding pursuant to the Maine Juvenile Code. Federal law recognizes the constitutional due process right of an adult defendant in a criminal jury proceeding to appear in court without physical restraints unless the judge has made an individualized determination that special circumstances justify use of those restraints. *See, e.g., Deck v. Missouri*, 544 U.S. 622, 629-32 (2005). The interests of the juvenile in appearing without restraints and the authority of the court to promote safety for all involved, have not, however, been extensively addressed by federal or state courts.

Through this rule, Maine joins a growing number of states in recognizing that the best practice in juvenile proceedings is to avoid shackling whenever it can be done without compromising the safety of the juvenile or others in the courtroom.

2. This amendment shall be effective on _____, 2015.

Dated: _____, 2015

FOR THE COURT*

LEIGH I. SAUFLEY
Chief Justice
DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
THOMAS E. HUMPHREY
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.